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Chase Home Finance LLC and
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

TIMOTHY BARNES, an individual,

PLAINTIFF,

v.

CHASE HOME FINANCE, LLC, a
Delaware Corp., **CHASE BANK USA, N.A.**, a
subsidiary of JP Morgan Chase & Co., a
Delaware Corp., **IBM LENDER BUSINESS
PROCESS SERVICES, INC.**, a Delaware
Corp., **FEDERAL NATIONAL
MORTGAGE ASSOCIATION, JOHN AND
JANE DOES 1-10,**

DEFENDANTS.

Case No. 3:11-cv-00142-PK

**JOINT MOTION FOR ENTRY OF
WRITTEN ORDER MEMORIALIZING
COURT'S AUTHORIZATION OF
DEFENDANTS' REQUESTED
LIMITED DISCOVERY**

L.R. 7-1 CERTIFICATION

Counsel for Defendants Chase Home Finance LLC, now JPMorgan Chase Bank, N.A. as successor by merger to Chase Home Finance LLC, and Chase Bank USA, N.A., and for IBM Lender Business Process Services, Inc., now known as Seterus, Inc., and Federal National Mortgage Association, conferred with Plaintiff Timothy Barnes (“Plaintiff”) via an exchange of numerous emails and via telephone on October 12, 2017, but the parties were unable to resolve the subject matter of this motion.

MOTION

Defendants Chase Home Finance LLC, now JPMorgan Chase Bank, N.A. as successor by merger to Chase Home Finance LLC, Chase Bank USA, N.A. (collectively “Chase”), IBM Lender Business Process Services, Inc., now known as Seterus, Inc., and Federal National Mortgage Association (collectively “FNMA”) (Chase and FNMA collectively shall be referred to as “Defendants”) jointly move this Court for entry of a written order memorializing this Court’s authorization of Defendants’ request for additional discovery at the September 22, 2017 Status Conference as set forth below.

This motion is supported by the concurrently filed Declaration of Kevin H. Kono, the following memorandum, and the records and files in this matter.

MEMORANDUM

On September 22, 2017, this Court held a Status Conference via telephone. At that time, Defendants jointly requested that the Court extend the time in which they had to respond to Plaintiff’s motion for summary judgment (Doc. No. 175) by 90 days to allow Defendants to conduct limited additional, necessary discovery before preparing a response, particularly in light of the passage of several years between the original disposition of the case and the remand following appeal.¹ Defendants explained by way of example that they needed additional

¹ Counsel for Chase also noted that it is new to the case and also requires additional time to familiarize themselves with the issues in and history of the case.

discovery regarding Plaintiff's ability to meet the requirement that he tender the balance of the loan funds (if rescission is allowed), including specifically Plaintiff's new deposition testimony on the tender issue given that Plaintiff's prior deposition occurred over five years ago. Defendants' counsel also identified Plaintiff's title in the property and third-party discovery regarding Plaintiff's loan closing as areas where discovery was needed.

After hearing Defendants' position and Plaintiff's objections, the Court granted Defendants an additional 60 days in which to conduct the discovery, prepare responses to Plaintiff's motion for summary judgment, and file their own motions for summary judgment if they so choose. After the Status Conference, the Court entered a written Order [Doc. No. 180] setting the November 21, 2017 as the deadline for Defendants' response to Plaintiff's motion and Defendants' cross-motion, if any, December 12, 2017 as the deadline for Plaintiff's reply and response to Defendants' cross-motion, if any, and December 27, 2017 as the deadline for Defendants' reply to any cross-motion.

Based on the Court's permission for Defendants to conduct the additional, limited discovery discussed at the Status Conference, Chase served limited sets of Requests for Production and Interrogatories on Plaintiff on September 29, 2017 and FNMA served Requests for Production and Interrogatories on Plaintiff on October 3, 2017. Additionally, on October 2, 2017, counsel for Chase contacted Plaintiff via e-mail proposing dates for his deposition.² In response, Plaintiff took the position that because the Court's Order issued after the Status Conference [Doc. No. 180] does not expressly authorize discovery, Defendants are not allowed to take discovery prior to responding to Plaintiff's motion for summary judgment, or filing their cross-motions, without first obtaining separate leave of Court. Based on Plaintiff's position, Defendants requested clarification from the Court, via email on October 6, 2017 to the Court's

² The email correspondence described herein is attached to the Declaration of Kevin H. Kono as Exhibits 1-8.

deputy, as to whether Defendants are entitled to seek the discovery discussed at the Status Conference, or whether Defendants must seek further leave from the Court before doing so. On the same date, the Court clarified via email that the Court's "intent was to grant the partial extension of time to allow the Defendants to conduct the limited additional discovery they requested." Notwithstanding the Court's clarification, Plaintiff's position remains that additional discovery is not authorized and that he need not provide Defendants' requested discovery, or submit to a limited deposition, because there is no written order from this Court.

Given Plaintiff's position that Defendants are not authorized to conduct discovery without a written order despite the Court's ruling at the Status Conference and subsequent email confirmation, Defendants ask this Court to enter a written order memorializing the Court's prior oral order authorizing limited discovery along the lines Defendants requested at the September 22, 2017 Status Conference. To the extent the Court seeks further detail on the additional discovery sought by Defendants, Defendants request an Order allowing Defendants to take the following discovery, notwithstanding any previous discovery or case deadlines:

1. Depose Plaintiff, under Fed. R. Civ. P. 30(a)(2)(A)(ii) and due to the substantial passage of time since Plaintiff's deposition was last taken, on the limited issues of Plaintiff's ability to tender the balance of the loan funds, Plaintiff's alleged damages, and FNMA's assignee liability (including standard deposition background questions to establish capacity, etc.);³
2. Serve written discovery on Plaintiff limited to the issues of Plaintiff's ability to tender the balance of the loan funds, Plaintiff's title in the subject property, FNMA's assignee liability, and Plaintiff's alleged damages, and that written

³ See *Goins v. County of Merced*, Case No. 1:13-cv-01245-DAD-SKO, 2015 WL 9304749 at *4 (E.D. Cal. Dec. 22, 2015) (noting that a "long passage of time" justifies a second or reopening of a deposition).

discovery already served on Plaintiff by Defendants is deemed effective as of the service date; and

3. Conduct third-party discovery limited to the issues of Plaintiff's title in the subject property and the closing of Plaintiff's loan.⁴

Moreover, given the difficulties Defendants have experienced in coordinating their discovery efforts with Plaintiff thus far and in light of the lost time caused by Plaintiff's objections, Defendants anticipate that additional time will be necessary to obtain and complete the limited discovery described at the Status Conference and reiterated in this motion. Accordingly, Defendants also request that the Court grant Defendants 60 days from the date of its Order on this motion in which to conduct the limited discovery requested, respond to Plaintiff's motion for summary judgment, and file their own cross-motions, if any.

CONCLUSION

Defendants respectfully request that this Court enter a written order memorializing its authorization of limited discovery as requested by Defendants at the September 22, 2017 Status Conference. Specifically, Defendants request that this Court enter an Order confirming and providing that, notwithstanding any previous discovery or case deadlines, Defendants may: (1) take Plaintiff's deposition under Fed. R. Civ. P. 30(a)(2)(A)(ii) regarding Plaintiff's ability to tender the balance of the loan funds, FNMA's assignee liability, and Plaintiff's alleged damages (including standard deposition background questions to establish capacity, etc.); (2) issue written discovery to Plaintiff regarding Plaintiff's ability to tender the balance of the loan funds, Plaintiff's title in the subject property, FNMA's assignee liability, and Plaintiff's alleged damages (with written discovery previously served by Defendants effective as of the date served

⁴ After providing the other parties with the required notice, Chase served a subpoena duces tecum on First American Title Company of Oregon, the title company that closed Plaintiff's loan. Plaintiff has not objected to that subpoena, but Defendants include the third-party discovery in this request to avoid any future argument by Plaintiff asserting the subpoena was not authorized.

on Plaintiff); (3) conduct third-party discovery regarding Plaintiff's title in the subject property and the closing of Plaintiff's loan; and (4) have 60 days from the date of the Court's Order on this motion to conduct the limited discovery, respond to Plaintiff's motion for summary judgment, and file their own cross-motions for summary judgment, if any.

DATED this 13th day of October, 2017.

MCCARTHY & HOLTHUS

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Attorneys for Defendants
Chase Home Finance LLC and
Chase Bank USA, N.A.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **JOINT MOTION FOR ENTRY OF WRITTEN ORDER MEMORIALIZING COURT'S AUTHORIZATION OF DEFENDANTS' REQUESTED LIMITED DISCOVERY** on:

Timothy Barnes
590 South Greenwood Rd.
Independence, OR 97351
Telephone (503) 585-9517

Plaintiff

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said plaintiff's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below; and on

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Attorney for Defendants IBM Lender Business Process Services, Inc.
(now known as Seterus) and Federal National Mortgage Association

by using the Electronic Court Filing Systems of the U.S. District Court of Oregon.

Dated this 13th day of October, 2017.

DAVIS WRIGHT TREMAINE LLP

By: s/ Kevin H. Kono

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